

## **REMARKS**

This Amendment is presented in response to the Examiner's Office Action mailed March 30, 2004. Claim 3 is canceled, claims 1, 2, 4-6 and 8 are amended, and new claims 10-28 are added. Claims 1-2 and 4-28 are now pending in this application.

Reconsideration of this application is respectfully requested in view of the foregoing amendments to the claims and the following remarks. For the convenience and reference of the Examiner, the remarks of the Applicant are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. General Considerations**

Applicant notes that the claim amendments and arguments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such claim amendments and arguments should not be construed as an acquiescence, on the part of the Applicant, as to the purported teachings or prior art status of the cited references, nor as to the characterization of the cited references advanced by the Examiner. Accordingly, Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time, should it arise.

Applicant respectfully notes further that the following discussion of specific claim rejections should not be construed to constitute an exhaustive enumeration of the distinctions between the claims of the present application and the references cited by the Examiner. Instead, such distinctions are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose future

consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner.

## **II. Objection to the Specification**

The Examiner has objected to the title of the application stating that “The title of the invention is not descriptive.” Applicant respectfully disagrees with the Examiner but submits that in light of the amendment herein to the specification, the objection has been overcome and should be withdrawn.

## **III. Objection to Claim 3**

The Examiner has objected to claim 3, stating that “in line two (2) of the claim, ‘an bond’ should be ‘a bond’.” Applicant respectfully submits that in light of the cancellation of claim 3 herein, the objection to claim 3 has been rendered moot and should, accordingly, be withdrawn.

## **IV. Claim Rejections Under 35 U.S.C. § 112**

The Examiner has rejected claims 6 and 8 under 35 U.S.C. § 112, second paragraph, stating that “Claim 6 contains the trademark/trade name Kovar” and “The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.”

Applicant respectfully submits that in light of the amendment herein to claim 6, the rejection of claims 6 and 8 has been overcome and should accordingly be withdrawn.

V. Claim Rejections Under 35 U.S.C. § 102(e)

Applicant notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *See MPEP § 2131.*

With particular reference now to the rejection, the Examiner has rejected claims 1 and 3 under 35 U.S.C. § 102(e) as being anticipated by U.S. 6,134,299 to *Artig* (“*Artig*”). As claim 3 is canceled herein, Applicant respectfully submits that the rejection of claim 3 has thus been rendered moot and should, accordingly, be withdrawn. Regarding claim 1, Applicant disagrees with the Examiner, but Applicant has nonetheless amended claim 1 herein so that claim 1 now requires, among other things, “depositing a first bond coating on the substrate; and depositing a radiation shielding coating on the first bond coating.”

As to the inclusion of a “first bond coating” such as is now recited in claim 1, the Examiner has alleged in the rejection of claim 3 that *Artig* “teaches further the step of depositing a bond coating between the substrate and the radiation shield coating . . . (see column 4, lines 29-31).” However, examination of *Artig* clearly indicates that, in fact, no such bond coating, or any other intermediate coating, is disclosed or suggested in *Artig*. Rather, *Artig* simply discloses a single layer, namely, a shielding layer, attached directly to the vacuum enclosure.

In particular, *Artig* states that “To achieve an extra protection of the environment against radiation, the outside surface of the Kovar vacuum enclosure may be coated by the layer of Tungsten, since both these materials having matching thermal expansion.” (col. 4, lines 26-28) (emphasis added). It would thus seem clear from the foregoing that *Artig* is concerned with a

radiation shield layer that is applied directly to the vacuum enclosure, since no mention or suggestion is made of any intervening layers. Moreover, the shield layer comprises tungsten which, according to *Artig*, is particularly desirable since tungsten has a thermal expansion that matches that of the Kovar vacuum enclosure to which the shield layer is applied. *See, Id.* Finally, *Artig* discloses what is characterized there as an alternative shield layer composition, stating “The thermal match between the layer and the vacuum enclosure is improved when about 10% of Iron is added to the shielding layer” (*Id.* at lines 29-32) (emphasis added). In this alternative shield layer then, the tungsten includes an iron component. Thus, *Artig* does not disclose a bond layer at all but, instead, recites what are characterized there as two alternative types of shield layers.

In view of the foregoing, Applicant respectfully submits that *Artig* fails to disclose each and every element as set forth in independent claim 1 as herein amended and, accordingly, *Artig* fails to anticipate claim 1, and likewise fails to anticipate claims 2-4 depending therefrom. Applicant thus respectfully submits that for at least the foregoing reasons, the rejection of claim 1 under 35 U.S.C. § 102(e) has been overcome and should be withdrawn.

## **VI. Claim Rejections Under 35 U.S.C. § 103(a)**

In the present case, the Examiner has used *Artig* (U.S. 6,134,299) as a basis for all of the 35 U.S.C. § 103(a) obviousness rejections made in the Office Action. As noted by the Examiner, *Artig* qualifies as prior art only under Section 102(e) inasmuch as *Artig* was filed on August 21, 1998, i.e., prior to the January 26, 2000 filing date of the parent application to which the present divisional application claims priority.

With respect to the foregoing, 35 U.S.C. § 103(c) provides that for applications filed on or after November 29, 1999, a 35 U.S.C. § 103(a) rejection based upon a 35 U.S.C. § 102(e) reference can be overcome by a showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See, e.g., *MPEP* §§ 706.02(l)(1) and 706.02(l)(2).

In this case, both *Artig* and the subject matter of the claimed invention were commonly owned by Varian Medical Systems, Inc. at the time the claimed invention was made. In particular, *Artig* was assigned to Varian Medical Systems, Inc. effective April 6, 1999 (recorded at Reel 009876, Frame 0283), see attached Exhibit A, and the parent (Ser. No. 09/491,416) to this divisional application had been assigned to Varian Medical Systems, Inc. (recorded at Reel 010529, Frame 0785), see attached Exhibit B, when such parent was filed on January 26, 2000.

Note that both *Artig* and the parent to the present divisional application were assigned to Varian Medical Systems Technologies, Inc. on September 26, 2003 and remain so assigned (see Exhibit A and Exhibit B).

Because *Artig* qualifies as prior art only under 35 U.S.C. § 102(e) and was commonly assigned to Varian Medical Systems, Inc. at the time the present invention was made, *Artig* does not constitute prior art that can be applied to reject claims 2, 4 and 5-9 under 35 U.S.C. § 103(a). In view of the foregoing, the rejection of claims 2, 4 and 5-9 are rendered moot and such rejection should accordingly be withdrawn.

## VII. New Claims

Applicant has added new dependent claims 10-19. As each of these new claims depends from an independent claim that Applicant believes is in allowable condition, Applicant respectfully submits that new claims 10-19 are likewise in condition for allowance.

In addition, Applicant has added new claims 20-28. Applicant respectfully submits that, consistent with the discussion presented herein, new claims 20-28, each of which is directed to a combination that includes, among other things, “a first bond layer” and “a second bond layer” are patentably distinct from the devices purported by the Examiner to be disclosed in the references that the Examiner has cited. In this connection, Applicant respectfully notes that reference to the aforementioned exemplary limitations is not intended, nor should it be construed, to be either an admission or assertion by the Applicant that patentability of Applicant’s new claims, or any other claims, hinges on the presence of such limitations. Rather, Applicant submits that each of the now pending claims, considered in its respective entirety, patentably distinguishes over the references cited by the Examiner and such claims are, accordingly, in condition for allowance.

### CONCLUSION

In view of the discussion and amendments submitted herein, Applicant respectfully submits that each of the pending claims 1-2 and 4-28 now are in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 30<sup>th</sup> day of August 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Malen Jr.', is written over the printed name.

Peter F. Malen Jr.  
Attorney for Applicant  
Registration No. 45,576  
Customer No. 022913



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JUNE 21, 1999

PTAS

VARIAN MEDICAL SYSTEMS, INC  
DEBBIE KUS  
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LEGAL DEPARTMENT  
PALO ALTO, CA 94304



\*101013932A\*

UNITED STATES PATENT AND TRADEMARK OFFICE  
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RECORDATION DATE: 04/06/1999

REEL/FRAME: 9876/0283  
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BRIEF: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

VARIAN ASSOCIATES, INC

DOC DATE: 03/29/1999

ASSIGNEE:

VARIAN MEDICAL SYSTEMS, INC  
3100 HANSEN WAY  
LEGAL DEPARTMENT  
PALO ALTO, CALIFORNIA 94304

SERIAL NUMBER: 09137950  
PATENT NUMBER:

FILING DATE: 08/21/1998  
ISSUE DATE:

MARY BENTON, EXAMINER  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

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LEGAL DEPARTMENT

Exhibit "A"



04-14-1999

FORM PTO-1595  
(Rev. 6-93)

RECORD



OMB No. 0651-0011 (exp 4/94)

101013932

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Patent and Trademark Office

Docket No. 98-41 US

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## B. Name of conveying party(ies):

Varian Associates, Inc.  
Palo Alto, CA 94304Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## B. Nature of conveyance:

- ☐ Assignment ☐ Merger
- ☐ Security Agreement ☒ Change of Name
- ☐ Other \_\_\_\_\_

Execution Date \_\_\_\_\_

## B. Name and address of receiving party(ies):

Name: VARIAN MEDICAL SYSTEMS, INC.Internal Address: Legal DepartmentStreet Address: 3100 Hansen WayCity: Palo Alto State: California ZIP: 94304Additional name(s) & address(es) attached? ☐ Yes ☒ No

## B. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is : \_\_\_\_\_

## A. Patent Application No.

09/137950

## B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Debbie KusInternal Address: VARIAN MEDICAL SYSTEMS, INC.Legal DepartmentStreet Address: 3100 Hansen WayCity: Palo Alto State: California ZIP: 94304

## 6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41)..... \$ 40.00☐ Enclosed☒ Authorized to be charged to deposit account

## 8. Deposit account number:

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Name of Person Signing

Signature

April 6, 1999

Date

Total number of pages including cover sheet, attachments and document: 4

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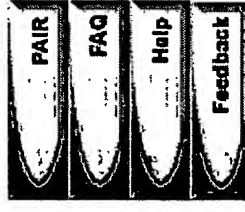


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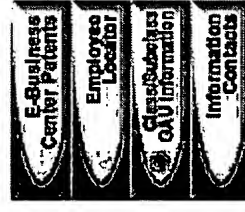
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## Patent Assignment Abstract of Title

Total Assignments: 3

Application #: 09137950

PCT #: NONE

Inventor: CHRISTOPHER F. ARTIG

Title: X-RAY GENERATING APPARATUS

Assignment: 1

Reel/Frame: 009412/0450

Received: 09/03/1998

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: ARTIG, CHRISTOPHER F.

Assignee: VARIAN ASSOCIATES, INC.

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Assignment: 2

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Received: 04/14/1999

Conveyance: CHANGE OF NAME (SEE DOCUMENT FOR DETAILS).

Assignor: VARIAN ASSOCIATES, INC

Assignee: VARIAN MEDICAL SYSTEMS, INC

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Correspondent: VARIAN MEDICAL SYSTEMS, INC

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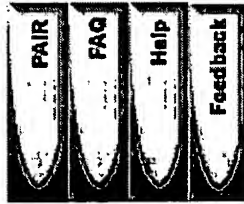


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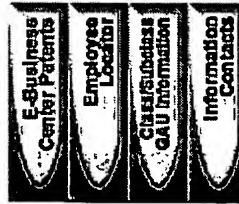
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### Patent Assignment Abstract of Title

#### Total Assignments: 2

Application #: 09491416

PCT #: NONE

Inventors: Christopher F. Artig, Deborah L. Salmon

Title: X-RAY TUBE AND METHOD OF MANUFACTURE

#### Assignment: 1

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Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

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#### Assignment: 2

Reel/Frame: 014059/0646 Received: 10/21/2003

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